

STATE OF CALIFORNIA  
BOARD OF EQUALIZATION

In the Matter of te Petition for	)	
Redetermination Under the	)	DECISION AND RECOMMENDATION
Sales and Use Tax Law	)	
	)	
<u>Petitioner</u>	)	

The above entitled matter came regularly for hearing on April 12, 1977 in Hollywood, California. Joseph Manarolla, Hearing Officer.

Appearing for Petitioner:

Appearing for the Board:

David Slechta, Supervising Auditor

Protested Item

Statement of account issued on November 1, 1976, pursuant to Sections 8611 and 8612 of the Revenue and Taxation Code for the liability of Predecessor, \_\_\_\_\_, Permit No. \_\_\_\_\_, Period 4/1/73 to 9/30/75.

Tax	\$6,811.09
Interest (to 11/30/76)	1,293.45
Penalty	<u>502.63</u>
Total	<u>\$8,673.17</u>

Petitioner requested and was granted a preliminary hearing by which his position in the matter could be considered.

Summary of Petition

Petitioner is a sole proprietorship engaged in the business of operating a service station.

\_\_\_\_\_ succeeded to the business of a partnership of \_\_\_\_\_ and \_\_\_\_\_ which previously had succeeded to the business of \_\_\_\_\_, a sole proprietorship.

The history of operations of the service station are as follows:

<u>Period</u>	<u>Permit No.</u>	<u>Operated By</u>
3/12/70 – 5/31/75	_____	_____
6/1/75 – 11/16/75	_____	_____
11/17/75 – Present	_____	_____

According to available information, \_\_\_\_\_ encountered financial problems during the period of his operation of the station as an individual, and as a result was unable to obtain gasoline from its supplier (\_\_\_\_\_) unless the outstanding debt to \_\_\_\_\_ was paid. At this point \_\_\_\_\_ appeared and agreed to pay \_\_\_\_\_ outstanding debt to \_\_\_\_\_ for a 50% interest in \_\_\_\_\_ business, which was to be reorganized as a partnership of \_\_\_\_\_ and \_\_\_\_\_. The debt to \_\_\_\_\_ was paid by \_\_\_\_\_ in May 1975.

\_\_\_\_\_ permit was closed-out on 5/30/75 and a new permit, \_\_\_\_\_ was issued to the partnership of \_\_\_\_\_ with a starting date of 6/1/75 under which the operations of the station were continued at the same location.

A close-out audit, dated 6/17/76, of the operations of \_\_\_\_\_ under his individual seller's permit disclosed a substantial liability for unreported taxes in addition to liability for unpaid no-remittance returns filed for the months of January, February, March and May, 1975.

The operations of the partnership apparently were not profitable and the permit was close-out on 11/16/75 with \_\_\_\_\_ continuing the operations as a sole proprietorship under \_\_\_\_\_ effecting 11/17/75. Substantial unpaid tax liability was also determined against the partnership for the period of its operations.

On November 1, 1976 Statement of Account was issued to \_\_\_\_\_ successor to \_\_\_\_\_.

Statement of Account dated November 4, 1976 also was issued to the partnership as successor to \_\_\_\_\_.

Statements of Account were also issued to \_\_\_\_\_ and to Mr. \_\_\_\_\_ in their individual capacities for the liability of the partnership as a result of its own operations and as successor to \_\_\_\_\_.

\_\_\_\_\_ has conceded responsibility for the liability occasioned by the operations of the partnership and that accruing during the period of his individual operations but denies responsibility for the liability determined against \_\_\_\_\_ during his individual operations of the business under Permit No. \_\_\_\_\_. \_\_\_\_\_ also contends that the partnership is not liable as a successor for \_\_\_\_\_ liability. A separate petition has been filed by \_\_\_\_\_ with respect to the issue of successor liability as it applies to the partnership. That issue is the subject of a separate report to be written.

In the instant case \_\_\_\_\_ contends he is not the successor to \_\_\_\_\_ and accordingly is not responsible for \_\_\_\_\_ liability.

It is argued that:

1. \_\_\_\_\_ did not sell his stock of goods or business since there was in fact nothing to sell. \_\_\_\_\_ at best was securing an opportunity to profit in the operation of a gas station by paying outstanding creditors, which included \_\_\_\_\_ and the State Board of Equalization.

2. \_\_\_\_\_ complied with the requirement of Section 6811 in that he paid directly to the State Board of Equalization the amount of tax computed to be due at the time from\_\_\_\_\_.

3. \_\_\_\_\_ nor the partnership received anything of value from \_\_\_\_\_ which could have been taken by the State to satisfy \_\_\_\_\_ tax liability.

According to Petitioner, on about May 26, 1975, \_\_\_\_\_ visited the office of the Board (Hollywood) and talked to Mr. Beebe, (a tax representative) about \_\_\_\_\_ tax account. \_\_\_\_\_ was told that the May payment was outstanding in the amount of \$877.00. \_\_\_\_\_ further advised that \_\_\_\_\_ had sufficient security to cover any other outstanding liabilities. On June 1, 1975, \_\_\_\_\_ visited the Board office again and confirmed the \$877.00 delinquency and was again told that that was the extent of \_\_\_\_\_ liability. \_\_\_\_\_ paid that amount on \_\_\_\_\_ account and a new account number was issued for the \_\_\_\_\_ partnership.

The Board's staff has no written record of the above conversation with \_\_\_\_\_ and the persons involved have no recollection of what was said. However, the record does show that no remittance returns were filed for January, February and March of 1975 with the unpaid liability greatly in excess of \$877.00 as of May 26, 1975, as follows:

<u>Month</u>	<u>Tax</u>	<u>Int.</u>	<u>Pen.</u>	<u>Totals</u>
January 1975	\$905.25	\$22.65	\$90.53	\$1,018.47
February 1975	882.38	17.64	88.24	988.26
March 1975	914.28	13.43	91.43	1,019.42

(Interest above computed July 31, 1975)

Security deposit in the amount of \$1,875.00 had been posted by \_\_\_\_\_.

No remittance return for the month of May 1975 in the amount of \$995.88 in unpaid tax also was filed.

The close-out audit liability was not established until 6/17/76.

#### Analysis and Conclusion

Section 6811 of the Revenue and Taxation Code provides:

“If any person liable for any amount under this part sells out his business or stock of goods or quits the business, his successor or assigns shall withhold sufficient of the purchase price to cover such amount until the former owners produces a receipts from the Board showing that it has been paid or a certificate stating that no amount is due.”

Section 6812 provides in relevant par as follows:

“If a purchaser of a business or stock of goods fails to withhold purchase price as required, he becomes personally liable for the payment of the amount required to be withheld by him to the extent of the purchase price, valued in money.”

The argument that \_\_\_\_\_ did not sell his stock of goods or business since there was nothing to sell, cannot be sustained.

While there is no record of the value of any inventory, gasoline, parts, oil, accessories, etc. in the possession of \_\_\_\_\_ at the time of the sale of the one-half interest to \_\_\_\_\_ there was a “business.”

“‘Business’ includes any activity engaged in by any person or caused to be engaged in by him with the object of gain, benefit or advantage, either direct or indirect.” Section 6013, Revenue and Taxation Code.

\_\_\_\_\_ purchased one-half interest in the business of \_\_\_\_\_ and qualifies as a successor within the meaning of Sections 6811 and 6812 of the Revenue and Taxation Code. The amount paid by \_\_\_\_\_ to \_\_\_\_\_ on behalf of \_\_\_\_\_ constituted the purchase price required by statute to be withheld to cover the unpaid tax liability.

The fact that \_\_\_\_\_ paid an amount to the Board which he allegedly understood to be the total liability due under \_\_\_\_\_ account does not meet the requirement of Section 6812 for release of personal liability.

It is concluded that \_\_\_\_\_ is liable as a successor, for the tax liability of \_\_\_\_\_ to the extent of the purchase price for his interest in \_\_\_\_\_ business.

#### Recommendation

The Petitioner should remain liable as a successor to the extent of the purchase price paid for his interest in the business of \_\_\_\_\_.

\_\_\_\_\_  
Joseph Manarolla, Hearing Officer

6/15/77  
Date

REVIEWED FOR AUDIT

\_\_\_\_\_  
Principal Tax Auditor

STATE OF CALIFORNIA  
BOARD OF EQUALIZATION

In the Matter of the Petition for	)	
Redetermination Under the	)	DECISION AND RECOMMENDATION
Sales and Use Tax Law	)	
	)	
<u>Petitioner</u>	)	

The above entitled matter came on regularly for hearing on April 18, 1977 in Hollywood, California. Joseph Manarolla, Hearing Officer.

This matter was heard in conjunction with the petition of \_\_\_\_\_.

Appearing for the Petitioner:

Appearing for the Board:  
David Slechta, Supervising Auditor

Pursuant to a State of Account for successor's liability issued to the partnership of \_\_\_\_\_ and \_\_\_\_\_ dated November 14, 1976, for the liability determined against the Predecessor in business, requested a hearing which was granted in this matter.

The liability shown by the Statement of Account is as follows:

<u>Tax</u>	<u>Interest</u>	<u>Penalty</u>	<u>Total</u>
\$4,866.52	\$958.61	\$502.63	\$6,237.76

Petitioner's Contention

Petitioner contends that it is not a successor within the meaning of Sections 6811 and 6812 of the Revenue and Taxation Code and accordingly is not responsible for the liability determined against \_\_\_\_\_ (an individual proprietorship).

Summary of Petition

The underlying facts for this petition are the same as set forth in the decision prepared on this date for the petition of \_\_\_\_\_, account No. \_\_\_\_\_ which is incorporated herein by reference.

Analysis and Conclusion

Petitioner, a partnership did not purchase a business or stock of goods from \_\_\_\_\_ but was organized through contribution to it \_\_\_\_\_ and \_\_\_\_\_ of their respective interests as co-

owners of the business previously operated by \_\_\_\_\_. Accordingly, Petitioner's partnership is not a successor within the meaning of Sections 6812 and 6811 of the Revenue and Taxation Code.

Recommendation

That the Statement of Account issued to the partnership of \_\_\_\_\_ and \_\_\_\_\_ be cancelled.

\_\_\_\_\_  
Joseph Manarolla, Hearing Officer

6/14/77  
Date

REVIEWED FOR AUDIT:

\_\_\_\_\_  
Principal Tax Auditor

\_\_\_\_\_  
Date